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09/731,019	12/07/2000	David J. Wilson	2551-108	9206

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EXAMINER

THOMPSON, MARC D

ART UNIT PAPER NUMBER

2144

DATE MAILED: 06/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/731,019

**Applicant(s)**

WILSON, DAVID J.

**Examiner**

Marc D. Thompson

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 7-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 7-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20050323</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

#### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/20/2004 has been entered.
2. Claims 1-2, and 7-17 remain pending.

#### ***Prior Advisory Action***

3. It is noted that the discussion set forth in the continuation box of the advisory action mailed out on 2/25/2005 was inadvertent, and does not relate to the present application. The text in this section of this prior Action should be stricken from the record, and disregarded.

#### ***Priority***

4. This application claims priority to provisional application 60/170,362 under 35 U.S.C. §120. The effective filing date for those claims which have proper support in the provisional application is 12/13/1999.

#### ***Drawings***

5. The Examiner contends that the drawings submitted on 3/28/2001 are acceptable for examination proceedings.

#### ***Official Notice using MPEP § 2144.03***

6. As previously asserted, the concern for limiting a person/voter with one, and only one vote, has been a concern since the earliest of elections known to mankind. Any discussion of

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truly democratic proceedings necessarily involves the equivalence of all individuals casting votes or opinions, and the limiting of input from each individual to a single, concrete position.

7. In light of the environment in which the claimed invention operates, it is noted that Internet technology was routinely engaged with gathering input/opinions from users of the network, as clearly and unambiguously described by the prior art of record, both applied and otherwise.

8. Examiner takes Official Notice (see MPEP § 2144.03) that mechanisms for limiting voting/opinion inputs by the same user/person/individual/etc. to a single, definitive position, implemented in a computer networking environment was well known in the art at the time the invention was made. While specifics as to how these mechanisms operated are not at issue, there were various well known mechanisms limiting input to a single entry from a particular individual which were common in the art, including, identification of the individual by identification number(s) (inter alia, U.S. Patent Number 5,950,172, Column 10, Lines 58-61), filtering by network address (inter alia, U.S. Patent Number 6,362,837, Column 5, Lines 51-55), and biometric or other “physical” measurement characteristics to ensure individuality (inter alia, U.S. Patent Number 5,875,432, Column 4, Lines 4-8), to name only a few. Another widely common method was requirement for an individual to “login” or otherwise identify themselves to the network so actions were able to be tracked, recorded, and managed by network administrators. See, inter alia, U.S. Patent Number 6,772,139, Column 17, Lines 20-39.

9. It is noted that if functionality outside the realm of this discussion is being addressed by Applicant, serious issues of enablement under 35 U.S.C. § 112 may arise. Even using any of the above recited mechanisms, there are serious questions about how “...indications does not exceed

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one indication for the review from the user” can be properly ensured, without counting individual hands at a physical meeting of the “users”. To determine, over a network, whether a particular “user” has only indicated (i.e., voted, reviewed, etc.) something once (only one time), would have raised some serious questions of actual identification of each distinct [network] user and [potential] verification of this fundamental determination in order to ensure each user only submitted information once. One of ordinary skill in the art would have recognized that undue experimentation would have been required to provide the level of verification seemingly asserted by Applicant in the response, given a direct, literal reading of the claim limitations.

10. The Applicant is entitled to traverse any/all official notice taken in this action according to MPEP § 2144.03. However, MPEP § 2144.03 further states “See also *In re Boon*, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice).” Specifically, *In re Boon*, 169 USPQ 231, 234 states “as we held in *Ahlert*, an applicant must be given the opportunity to challenge either the correctness of the fact asserted or the notoriety or repute of the reference cited in support of the assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed”. Thus, a traversal by the Applicant that is merely “a bald challenge, with nothing more”, as was apparent in the most prior response, will be given very little weight. Note MPEP § 2144.03, “To adequately traverse such a finding [of Official Notice], an applicant must specifically point out the supposed errors in the examiner’s action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also *Chevenard*, 139 F.2d at 713, 60 USPQ at 241.

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A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate."

11. Lastly, MPEP § 2144.03 states "If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate." In conclusion, a mere bald challenge, as the one provided in the most recent response at Page 10, if made in subsequent actions, will be interpreted as an inadequate traversal, and the official notice will be taken as admitted prior art for the course of prosecution.

***Claim Rejections - 35 USC § 102/§ 103***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

13. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1-2 and 7-17 are rejected under 35 U.S.C. 102(a) as anticipated by NOWTHIS.COM (nowthis.com blog, dated 11/24/1999), hereinafter referred to as Nowthis, or, in the alternative, under 35 U.S.C. 103(a) as obvious over Nowthis.

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15. Nowthis disclosed, specifically, Amazon.com having implemented “x people found this review helpful. Y did not. Was it helpful to you? [YES] [NO]”. See, Page 2. This specifically provided interactive element features as claimed, count tabulation, and since the sentence references “x people”, it must be presumed that each person is entitled to only a single vote, since a second vote from the same person would not increase the number of “people” referenced.

16. In the alternative, Nowthis may have been construed not to have expressly recited the provision for “incrementing a count of a stored number of indications for the review if the stored number of indications does not exceed one indication for the review from the user”, as claimed. That is, without this presumption that “x people” references distinct, individual persons, the reference may be construed to lack evidence to prove the count was incremented only when a user reviews something for the first time.

17. As discussed above in regard to Official Notice using MPEP § 2144.03, mechanisms for limiting users to a single input were notoriously well known in the art. Since, the reference specifically disclosed “x people” (as opposed to “x votes”), the inclusion of functionality to preclude a “people” or “person” to a single submitted entry would have been obvious to one of ordinary skill in the art at the time of invention, since the reference specifically disclosed “Was it helpful to you?” (noting individual questioning), and “X people found this review helpful...Y did not” (noting individually submitted answers). Any minimally skilled information gatherer dealing with surveys, voting, polls, etc., would have been motivated to ensure that the same “person” casting multiple votes be thwarted in order to maintain integrity of the survey, election, poll, etc.

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18. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the broadly described Nowthis functionality in use by Amazon.com with any known provision to limit the number of votes from a particular individual to one, and only one, simply in order to maintain integrity of the poll.

19. Claims 1-2 and 7-17 are rejected.

20. Claims 1-2 and 7-17 are rejected under 35 U.S.C. §103(a) as being unpatentable over Epinions (www.epinions.com, October 12, 1999), hereinafter referred to as Epinions, in view of Salas et al. (U.S. Patent Number 6,230,185), hereinafter referred to as Salas.

21. Epinions taught a method for identifying valuable product/service reviews review(s) as being helpful as evidenced by the "Rating Summary", reporting "Rated Very Useful by:", and "Rated Useful by:", displaying further degrees of usefulness. See Pages 9 and 10. The total number of reviews which were available for review by a user was tabulated, and reported, additionally, for each individual degree of usefulness. Since both percentage and actual review voting tabulation was evident, the presence of the number of indications was clearly evident. See prior Office action(s) for particular limitation mapping to the applied art. The provision for an "interactive element" was included in the broad teachings as set forth by Epinions, since the invention operated in a typical GUI, and Internet browser application. The application itself was an interactive element which accepted and effected input from user clients. Since the review, voting, and all other user input came from a user, the "interactive" functionality of the interface is inherent.



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22. While Epinions disclosed the invention substantially as claimed, Epinions did not expressly disclose the prohibition of a user to indicate usefulness of a review only once. That is, Epinions did not expressly disclose the incrementing of a count only when “the number of indications does not exceed one indication from the user.” However, since Epinions gathered voted opinions and was enabled for usage in a typical Internet browser application, and utilized well known and widely implemented HTML markup language for presentation dictation, an ordinary artisan would have been motivated to search the related arts to isolate teachings dealing directly with web page technology which disclosed specifics of voting mechanism(s) available at the time of invention.

23. In the same art of network based information gathering from individuals, Salas specifically disclosed a voting/polling mechanism utilized in typical HTML documents acting to optionally limit input from particular user(s) to one (1). See, inter alia, Column 16, Lines 33-54. Specific limiting of one member to one vote was expressly found at Column 16, Lines 51-54.

24. Since Epinions was implemented in an Internetworking environment, utilized typical Internet browser end user software for user input, and used HTML to present and gather information with network end users, the modification of this base system as disclosed with the HTML based polling mechanism provided by Salas would have been a matter of routine, and would have been obvious to one of ordinary skill in the art at the time of invention. Minimally, motivation for this modification would have been the implementation of voting features specifically disclosed by Epinions, fully enabled and described by Salas.

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25. Thus, the reviewing of posted reviews, maintaining the reviews, counts of the reviews, and reviews of the reviews, along with the provision for limiting the number of valid voting opportunities for a particular user was fully disclosed by the combination of Epinions and Salas.

26. Claims 1-2 and 7-17 are rejected.

27. Claims 1-2 and 7-17 are rejected under 35 U.S.C. §103(a) as being unpatentable over Klingman (U.S. Patent Number 5,950,172), hereinafter referred to as Klingman.

28. Klingman disclosed maintaining records of user reviews retrieved over a network, (inter alia, Column 12, Lines 9-18), display of these records in order to help users determine whether or not to purchase products/services (inter alia, Column 4, Lines 35-39, Column 9, Lines 8-19, Column 12, Lines 9-18, Column 16, Lines 28-32), incrementing a count of indications (inter alia, Column 12, Lines 9-30), limiting indication(s) to one indication (inter alia, Column 8, Lines 21-27, Column 10, Lines 58-61, Column 23, Lines 20-24), and displaying the information (inter alia, Column 12, Lines 9-18, Column 22, Lines 50-54). Klingman was also disclosed as implemented in a typical networking environment using standard Internet technology. See, inter alia, Column 15, Lines 49-59.

29. While Klingman disclosed the invention substantially as claimed, Klingman did not expressly disclose the reviewing of reviews. Klingman related to the reviewing of products and services. See, inter alia, Column 4, Lines 20-28. Klingman specifically disclosed the selective indication of users which were considered “most qualified” to rate the products/services. See, inter alia, Column 15, Lines 35-47. Thus, an ordinary artisan would have been motivated to

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explore the related arts for methods for determining which reviews or reviewers were more or less valuable to potential buyers of merchandise.

30. Since Klingman specifically mentions reviews of particular users were more valuable than others (as above, inter alia, Column 15, Lines 35-47), and the “desirability of a more multi dimensional scoring mechanism” when reliant upon “respondents being mostly from a group of people [had/had no] interest...” (Column 12, Lines 31-51), the ordinary artisan would have been motivated to better measure the weight of each review (also see, inter alia, Column 12, Lines 9-17), and the processing advancements in the art to better measure interest in products/services through a wide variety of processing algorithms including review of the review numbers themselves (Column 12, Line 64 through Column 13, Line 31), it would have been obvious to modify the system of Klingman to review the reviews (using the same methodology) in order to better gauge the effectiveness and accuracy of the reviews. See, inter alia, Column 13, Lines 27-31

31. Claims 1-2 and 7-17 are rejected.

### ***Response to Arguments***

32. The arguments presented by Applicant in the response, received on 12/20/2004, are not considered persuasive.

33. Applicant argues the lacking of the prior art to disclose “...indications does not exceed one indication for the review from the user.” See, response received 12/20/2004, inter alia, Pages 7, 9, and 10. It is submitted that this feature was not only disclose by numerous pieces of prior art, but was also notoriously well known in the art as evidenced by the taking of Official

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Notice. See discussion above regarding Official Notice should any question of this fact remain.

Applicant further attempts to argue this alleged lacking through a gross misrepresentation of the Salas reference at Page 9 of the Response, received 12/20/2004. Applicant is directed to Salas, inter alia, Column 17, Lines 51-54, providing express recitation of limiting indications from a particular user to any arbitrary number, including one (1).

34. Applicant argues the combination of Epinions and Salas. In response to Applicant argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Also, in response to Applicant argument that there is no suggestion to combine the references, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the Epinions reference specifically utilized a voting/polling mechanism which was not entirely disclosed, thereby motivating one of ordinary skill in the art working with the Epinions system to explore further teachings to fully enable the disclosed functionality.

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Minimally, Salas provided a generic method for implementing general voting functionality described broadly by Epinions.

35. Again, there is no evidence that shows that the invention as disclosed and claimed was reduced to practice prior to the prior art of record. The usage of the inventive concept seemingly spanned, minimally, three distinct companies at the time of filing, Amazon.com, Epinions.com, and Deja/dejanews. There is no supporting evidence to support the notion that the inventor invented this functionality or had a working model/product prior to disclosures of the others. Additionally, Applicant states numerous times that "Applicant does not admit that the cited references are prior art and reserves the right to 'swear behind' each of the cited references..."

It is noted that if this was the case, it is unclear why Applicant is withholding information pertinent to the examination process, thereby hindering prosecution. The removal of any/all of the prior and currently applied prior art teachings would greatly simplify the process of examination. As a result, it will be difficult to consider any submissions of this type timely or seasonable. Also note, "...showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application. Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or declaration..."

### ***Conclusion***

36. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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37. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Marc D. Thompson whose telephone number is 571-272-3932. The Examiner can normally be reached on Monday-Friday, 9am-4pm. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, William Cuchlinski, Jr. can be reached at 571-272-3925. The fax phone number for the organization where this application or proceeding is assigned remains 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Art Unit 2144